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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE LARYNGEAL MASK COMPANY LTD.
and LMA NORTH AMERICA, INC.,

Plaintiffs,

v.

AMBU A/S, AMBU INC., and AMBU LTD.,

Defendants,

AND RELATED COUNTERCLAIMS.

Case No. 3:07-cv-01988 DMS (NLS)

Jury Trial Demanded

**DECLARATION OF PATRICK E. PREMO IN
SUPPORT OF MOTION FOR LEAVE TO
ELECTRONICALLY FILE DEFENDANTS',
MOTION TO COMPEL ON JULY 14, 2009**

Judge Dana M. Sabraw
Magistrate Judge Nita L. Storms

I, Patrick E. Premo, declare as follows:

1. I am an attorney at law duly licensed to practice in California and am admitted to this district. I am a partner with the law firm of Fenwick & West, LLP, counsel for Defendants Ambu A/S, Ambu, Inc. and Ambu Ltd. (collectively, "Ambu"). I have personal knowledge of the matters set forth herein. If called upon to do so, could testify competently thereto.

2. As an initial matter, I sincerely apologize to the Court and to opposing counsel for the delays experienced in the e-filing process in preparing and filing the redacted form of its Memorandum of Points and Authorities in Support of Motion to Compel and the associated

1 Application to File Under Seal. I take full responsibility for the delays associated with electronic
2 filing and respectfully request that this Court consider the Motion to Compel that was ultimately
3 e-filed at approximately 4:44 a.m.

4 3. Ambu has attempted to be judicious in burdening the Court with discovery motions.
5 The present motion is Ambu's first motion relating to a discovery dispute since the claim
6 construction dispute in November 2008. Part of the delay encountered with respect to the present
7 Motion to Compel resulted from our decision to narrow and thus remove a number of discovery
8 issues from the motion, so as to limit Ambu's requests for Court intervention to only critical
9 matters. We were also able to avoid exceeding the twenty-five page limit for the memorandum.

10 4. Another factor underlying the delay was our attempt to closely follow procedures
11 concerning filing briefs and other papers under seal. Ambu refrained from filing under seal the
12 entirety of Ambu's brief in support of its Motion to Compel because we believed this would be in
13 violation of the Court's electronic filing procedures.

14 5. As a result of the length of the brief and number and size of exhibits, the preparation
15 of the redacted form of the memorandum and exhibits for public filing became delayed such that
16 they were e-filed at 4:17 a.m. and 4:44 a.m., respectively, on July 14, 2009 rather than before
17 midnight, July 13 as intended.

18 6. I worked with my legal team and remained in the office until the motion was e-filed
19 and ultimately served. At my instruction, my legal assistant first attempted to electronically file all
20 of the exhibits together but realized that one of the exhibits was too large to file electronically. We
21 elected to file it manually.

22 7. We then attempted to e-file the Notice of Motion, Memorandum of Points and
23 Authorities, and Declaration and exhibits together but received an error message, causing us to
24 again to undertake the lengthy process of uploading all of the papers and exhibits. We ultimately
25 had to electronically file the memorandum, declaration, and exhibits separately.

26 8. At approximately 5:02 a.m. on July 14, 2009, we electronically served the
27 unredacted copies of Ambu's moving papers on opposing counsel. At approximately 1:26 a.m. on
28 //

1 July 14, 2009, I received LMA's unredacted brief and confidential exhibits in support of its motion
2 to compel and for sanctions.

3 9. This morning I contacted LMA's counsel, John Sganga, to inquire whether LMA
4 would oppose this motion. Mr. Sganga called me back and confirmed that LMA would not oppose
5 this motion.

6 10. Ambu also hereby notifies the Court that it does not oppose LMA's application filed
7 on July 13, 2009 to submit a memorandum of points and authorities in support of its motion to
8 compel that exceeds the twenty-five page limit set by the local rules. Mr. Sganga informed me
9 during our call that LMA will not oppose a request by Ambu for its opposition to LMA's motion to
10 compel to exceed the twenty-five page limit.

12 I declare under penalty of perjury under the laws of the United States of America and the
13 State of California that the foregoing is true and correct, and that this declaration was executed
14 this 14th day of July, 2009 in Mountain View, California.

/s/ Patrick Premo

Patrick Premo

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule 5.2 on July 14, 2009.

By: /s/ Patrick E. Premo

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